

HOUSE BILL NO. 61

INTRODUCED BY D. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA RECREATION RESPONSIBILITY ACT; PROVIDING THAT A PERSON WHO ENGAGES IN A SPORT OR RECREATIONAL OPPORTUNITY ~~ASSUMES~~ ACKNOWLEDGES THE INHERENT RISKS IN THAT SPORT OR RECREATIONAL OPPORTUNITY AND IS RESPONSIBLE FOR INJURIES AND DAMAGES RESULTING FROM THOSE INHERENT RISKS; LIMITING THE LIABILITY OF THE PROVIDERS OF A SPORT OR RECREATIONAL OPPORTUNITY; CLARIFYING THAT A PROVIDER IS NOT REQUIRED TO ELIMINATE, ALTER, OR CONTROL THE INHERENT RISKS WITHIN A PARTICULAR SPORT OR RECREATIONAL OPPORTUNITY; STATING THE DUTIES OF A PERSON WHO PROVIDES AND A PERSON WHO PARTICIPATES IN A SPORT OR RECREATIONAL OPPORTUNITY; STATING THE RESPONSIBILITY OF THE PROVIDER AND PARTICIPANT FOR INJURIES TO A PARTICIPANT ASSUMES THE INHERENT RISKS IN THAT SPORT OR RECREATIONAL OPPORTUNITY AND IS RESPONSIBLE FOR INJURIES AND DAMAGES RESULTING FROM THOSE INHERENT RISKS; LIMITING THE LIABILITY OF THE PROVIDERS OF A SPORT OR RECREATIONAL OPPORTUNITY; CLARIFYING THAT A PROVIDER IS NOT REQUIRED TO ELIMINATE, ALTER, OR CONTROL THE INHERENT RISKS WITHIN A PARTICULAR SPORT OR RECREATIONAL OPPORTUNITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, all sports and recreational activities involve inherent risks that provide the challenge and excitement that entice recreationists to participate in those activities; and

~~WHEREAS, SPORTS AND RECREATIONAL PROVIDERS HAVE AN OBLIGATION TO INFORM RECREATIONISTS OF THE RISKS INHERENT IN THEIR PARTICULAR SPORTS AND RECREATIONAL ACTIVITIES; AND~~

WHEREAS, recreationists should ~~KNOWINGLY~~ accept the risks inherent in sports and recreational activities and be responsible for injury or damage resulting from those inherent risks; and

WHEREAS, the state has a legitimate interest in maintaining the economic viability of the sports and recreational industries by ~~discouraging claims based on damages resulting from~~ ENSURING THE EDUCATION OF PARTICIPANTS REGARDING THE DISCOURAGING CLAIMS BASED ON DAMAGES RESULTING FROM risks inherent in a sport or recreational activity ~~AND THUS DISCOURAGING CLAIMS; AND~~

WHEREAS, providers of recreational opportunities should not be required to alter the challenge and

excitement of recreational activities by ~~controlling~~ ELIMINATING CONTROLLING risks inherent in the activities; ~~and;~~
AND

WHEREAS, THE LIABILITY OF PROVIDERS OF RECREATIONAL OPPORTUNITIES SHOULD BE LIMITED TO
NEGLIGENCE THAT IS NOT ASSOCIATED WITH THE INHERENT RISKS OF A SPORT OR RECREATIONAL ACTIVITY.

~~WHEREAS, the liability of providers of recreational opportunities should be limited to negligence that~~
~~is not associated with the inherent risks of a sport or recreational activity.~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

NEW SECTION. Section 1. Short title -- purpose. (1) [Sections 1 through 4] may be cited as the
"Montana Recreation Responsibility Act".

(2) The legislature finds that sports and recreational activities are major industries in Montana and that
among the attractions of sports and recreation are risks, inherent and otherwise. The state has a legitimate
interest in maintaining the economic viability of the sports and recreational industries by discouraging claims
based on damages resulting from risks inherent in sports and recreation.

(3) The purpose of [sections 1 through 4] is to limit or eliminate the liability of a provider of a sport or
recreational opportunity to a sport or recreational participant when an injury or damage caused by or to the
participant is the result of risks inherent in the sport or recreational opportunity.

(4) The legislature intends that [sections 1 through 4] be broadly construed to effectuate the purpose
of [sections 1 through 4] to shield providers of a sport or recreational opportunity from liability for injuries and
damages caused by the inherent risks of a recreational activity.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 4], the following definitions
apply:

(1) "Inherent risks" means those dangers or conditions that are characteristic of, intrinsic to, or an
integral part of any sport or recreational activity.

(2) "Provider" means a person or governmental entity that promotes, offers, or conducts a sport or
recreational opportunity, for profit or otherwise.

(3) "Sport or recreational opportunity" means any commonly understood sporting activity, whether undertaken with or without permission, including but not limited to baseball, softball, football, soccer, basketball, bicycling, hiking, swimming, boating, hockey, dude ranching, nordic or alpine skiing, snow boarding, snow sliding, mountain climbing, river floating, whitewater rafting, canoeing, kayaking, target shooting, hunting, fishing, backcountry trips, horseback riding and other equine activity, snowmobiling, off-highway vehicle use, and any similar recreational activity.

NEW SECTION. Section 3. Limitation on liability in sport or recreational opportunity. (1) A person who participates in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity, whether those risks are known or unknown, and is legally responsible for all injury or death to the person and for all damage to the person's property that result from the inherent risks in that sport or recreational opportunity.

(2) A provider is not required to eliminate, alter, or control the inherent risks within the particular sport or recreational opportunity that is provided.

(3) [Sections 1 through 4] do not preclude an action based on the negligence of the provider if the injury, death, or damage is not the result of an inherent risk of the sport or recreational opportunity.

(4) [Sections 1 through 4] do not apply to a cause of action based on the design or manufacture of sports or recreational equipment or products or safety equipment used incidental to or required by the sport or recreational activity.

NEW SECTION. Section 4. Recreational activity -- applicability exceptions. [Sections 1 through 3] do not apply to duties, responsibilities, liability, or immunity related to:

(1) recreational use of waters or land, as provided in 23-2-321;

(2) snowmobiling, as provided in 23-2-653 and 23-2-654;

(3) skiing, as provided in 23-2-733 through 23-2-736;

(4) off-highway vehicle operation, as provided in 23-2-822;

(5) instruction in firearms and hunter safety or hunter education, as provided in 27-1-721;

(6) equine activity, as provided in 27-1-727;

(7) sponsored rodeo and similar events, as provided in 27-1-733;

(8) amusement rides, as provided in 27-1-743 and 27-1-744;

(9) recreational use of land, as provided in 23-2-907, 70-16-302, 77-1-805, 87-1-266, 87-1-267, and 87-1-286;

(10) wildcrafting, as provided in 76-10-106; and

(11) placement of a sign or marker warning of a hazard in water legally accessible to the public, as provided in 87-1-287.

NEW SECTION. **Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [sections 1 through 4].

NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 7. Two-thirds vote required.** Because [section 3] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 9. Applicability.** [This act] applies to injuries and deaths that occur on or after [the effective date of this act].

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